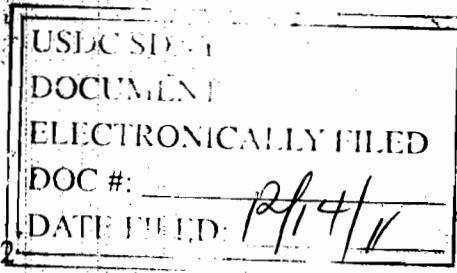


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December 14, 2011

Honorable Harold Baer, Jr.
Honorable Kimba Wood
Honorable Victor Marrero
United States District Judges
500 Pearl Street
New York, New York 10007-1312



Re: **United States v. Carollo, et al., 10 Cr. 654 (HB)**
United States v. Rubin/CDR., et al. 09-CR-1058 (VM)
United States v. Ghavami, et al. 10-CR-1217 (KW)

Dear Judges Baer, Marrero and Wood:

I am writing on behalf of the defendants and the Image privilege holders ("Counsel") respectfully to request that this Court order the government to produce certain witnesses, affidavits and related *Giglio* material for the hearing now scheduled for December 20, 2011.

On December 7, this Court directed the parties to submit a joint letter by December 16 setting forth areas of agreement and disagreement for the conduct of the hearing. We have made progress in that respect. Among other things, the government has agreed with Counsel's offer to accept affidavits from certain Department of Justice employees* in lieu of their testimony, unless the affidavits reveal that the affiants have personal knowledge of facts relevant to this hearing, in which case Counsel reserve the right to call the affiants.

The government, however, refuses to provide either testimony or affidavits from any of the six confidential informants who actually made the tape recordings at issue and who solicited the privileged information. In its December 7 Order, this Court directed that the hearing be held "to further develop the factual record as to the management of confidential informants and any potential related intrusion into any privilege during the government investigation related to the three above-captioned prosecutions." The confidential informants have personal knowledge of these issues. Without their testimony, the record will be based upon

* The government has refused to provide an affidavit from the Division Ethics Officer who apparently authorized taping.

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only the agents' untested account of the instructions which they say they gave to the confidential informants and the transcripts of what the informants did. These informants possess evidence necessary to fulfill the mandate of the Court to develop the factual record. Counsel notified the government that we will want to call the informants, if the government does not.

We respectfully request that the Court order the government to make the following confidential informants available for the hearing on December 20: Doug Goldberg, Dani Nach, Dean Pinard and Mark Zaino. The government should also produce affidavits from the two remaining confidential informants—Douglas Campbell and Matthew Rothman—under the same terms as the other affiants.

The government should also produce all *Giglio* material concerning these confidential informants in accordance with the Court's Order at the argument on December 2.

We make this request now so that the government would have adequate time to comply with such an Order, as we understand some of the informants may not reside in the New York region.

Respectfully submitted,


John S. Siffert

JSS:ac

cc: Laura Heiser, Esq.
Charles Reilly, Esq.
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All defense counsel in *United States v. Carollo, et al.*
All defense counsel in *United States v. Rubin/ CDR, et al.*
All defense counsel in *United States v. Ghavami, et al.*
Richard Scheff, Esq.
Chris Hall, Esq.
Nina Beattie, Esq.

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by

defendants and third parties.

SO ORDERED.

12-14-11

DATE


VICTOR MARRERO, U.S.D.J.